IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl. Revision No.454 of 2007(O&M)

DATE OF DECISION: MARCH 09, 2007

Bhupai Man Damai and another

...PETITIONERS

VERSUS

State of Punjab and another

...RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr.S.S.Rangi , Advocate,
for the petitioners.

...

The petitioners, who are facing trial in CBI Case No.RC-1(S)-1/2000/SIC-IV/ND dated 11.1.2000 under Section 120-B read with Sections 302,307,323,326,342,363,506 IPC and Sections 4 and 5 of the Anti Hijacking Act, 1982 and under Sections 25/27 of the Arms Act, have filed this criminal revision, which is barred by limitation, for setting aside the order dated 30.10.2006 passed by the Designated Court, Patiala, whereby the application filed by the accused for summoning the defence witnesses, was partly accepted.

2. In this case, after completion of the prosecution witnesses, the petitioners filed an application for summoning the following persons in their defence witnesses:-

(i) Dr.Farooq Abdulah
Former Chief Minister,
Jammu & Kashmir

(ii) Mr.Madan Lal Khurana,
Former Chief Minister,
Delhi.

(iii) Superintendent,
Tihar Jail,
Delhi.

(iv) Inspector General of Police,
Jammu & Kashmir.

(v) Consulate Pakistan Government,
Embassy of Pakistan, New Delhi.

(vi) Commissioner of Police,
Delhi.

(vii) Chief Aerodrome Authority,
Kandhar, Aerodrome,
Afghanistan through
Embassy of Afghanistan,
New Delhi.

3. The trial court after coming to the conclusion has declined to summon the aforesaid defence witnesses, while observing as under:-

> "From the list of DWs, I find that the names of these witnesses are given only to delay the present case with an ulterior motive. Otherwise, there is no need to summon these witnesses. The pilot of the Aircraft and Investigator have already been cross-examined at length along with other witnesses examined by the prosecution. There is nothing in the application how these witnesses will prove the innocence of the accused or falsifies the case of the prosecution. These witnesses have no concern with the defence version. Therefore, the witnesses cannot be summoned as the application regarding summoning of these witnesses is made for the purpose of delay and for defeating the ends of justice and vexations in nature."

4. The Designated Court after hearing the arguments of the counsel for the parties and going through the record of the case, ordered to summon only the Superintendent/concerned official of Tihar Jail, Delhi and Superintendent/concerned official of Central Jail, Arther Road, Mumbai. Against the said order, the petitioners have filed this criminal revision.

5. Counsel for the petitioners contends that it is settled proposition of law that the court should be liberal to allow the accused to lead defence and to summon the witnesses as per list provided by the accused. He further contends that the accused must be given full opportunity to defend himself by citing as many number of witnesses which according to him are necessary to prove his defence. The curtailment of the right of the accused to examine the witnesses in defence will amount to not providing him fair opportunity to defend the accusation Counsel contends that due to partly rejection of the application of the petitioners to summon the above named witnesses, a great prejudice has been caused to the petitioners, therefore, the petitioners may be allowed to summon those witnesses in the interest of justice.

6. After hearing the counsel for the petitioners and going through the contents of the petition as well as the impugned order, I do not find any ground to interfere in the impugned order in exercise of the inherent powers of this court in Section 482 of the Code of Criminal Procedure (hereinafter referred to as `the Code').

7. Section 243(2) of the Code clearly provides that the court has the powers to refuse to summon any person as a witness on any of the three different grounds: (a) if any witness is cited for the purpose of vexation; (b) if any witness is cited for causing delay; and (c) if any witness is cited for

defeating the ends of justice. The purpose of furnishing a list of witnesses and documents to the court before the accused is called upon to enter on his defence is to afford an occasion to the court to peruse the list. On such perusal, if the court feels that examination of at least some of the persons mentioned in the list is quite unnecessary to prove the defence plea and the time which would be needed for completing the examination of such witnesses would only result in procrastination, it is the duty of the court to shortlist such witnesses. It is also well within the powers of the Court to disallow the examination of some witnesses if the court feels that the list is intended only just to delay the proceedings. In the instant case, counsel for the petitioners could not satisfy the court how the examination of the witnesses, who have not been permitted by the Designated Court, is relevant for the purpose of defence. Merely because some political statements were made by the politicians to the press in favour of the accused, in my opinion, the same will not be a ground to summon those witnesses in defence. In this case, the Designated Court has come to a categorical conclusion that the witnesses summoned by the accused have no concern with the defence version and they have been summoned only for the purpose of delaying the proceedings of the case. I do not find any ground to interfere in the impugned order.

8. In my opinion, if the petitioners after examination of the permitted witnesses in defence, feel that examination of some more witnesses is necessary for just decision of the case in defence, it will be open for them to convince the trial court that some more persons need to be examined in the interest of justice. If such prayer is made, the Designated Court, if so satisfied, can permit the petitioners to examine such additional

witnesses, the examination of whom it considers essential for just decision of the case or it can exercise the power envisaged in Section 311 of the Code in respect of certain witnesses, and it will be open for the Designated Court to do the needful at the appropriate stage.

9. In view of the aforesaid, there is no merit in this petition and the same is hereby dismissed.

March 09, 2007 (SATISH KUMAR MITTAL)
vkg JUDGE